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HEARING ON THE ORBIT ACT: AN EXAMINATION OF PROGRESS MADE IN PRIVATIZING THE SATELLITE COMMUNICATIONS MARKETPLACE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES
APRIL 14, 2005

My name is Alan Auckenthaler. I am a Vice President of Inmarsat Ventures Limited, which in ORBIT terms is the privatized "successor entity" to the International Mobile Satellite Organization. I was General Counsel of Inmarsat and the predecessor intergovernmental organization from 1994 until last year, throughout virtually all of the privatization and ORBIT compliance process.

On behalf of my company, I thank the Subcommittee for holding this hearing, and for its interest in the status of our privatization. I also thank the Members of the Subcommittee for supporting amendments to the ORBIT Act three times during the past few years to give us more time and new ways to comply in light of financial market conditions not foreseen when the Act was passed.

Let me begin by describing some exciting recent business developments at Inmarsat, because they demonstrate how privatization is resulting in real benefits to our customers in the federal government and American business, and to others around the world. Our privatization process started in 1993, long before ORBIT, but it is nevertheless a remarkable policy success for the United States, because the U.S. delegation played a leading role at the intergovernmental organization in forging a political consensus in support of privatization and in driving the process to completion.

A month ago, on March 11th, the largest and most powerful commercial communications satellite ever built was successfully launched on Lockheed Martin's

Atlas V rocket from Cape Canaveral. This was the first of our Inmarsat-4 satellites. With 60 times the power, 228 spot beams, and advanced modulation and coding techniques, the Inmarsat-4 satellites will use spectrum up to 17 times more efficiently than our previous satellites. The Inmarsat-4 satellites will enable our distributors to provide mobile and portable broadband services at around half a megabit per second to customers using terminals no larger than a notebook computer. We call these services Broadband Global Area Network or BGAN.

The Inmarsat system is already relied on for the Global Maritime Distress and Safety System and by the United States Coast Guard for Search and Rescue operations. It is also relied on by the Federal Aviation Administration to support Air Traffic Control communications. The United States Department of Defense is our largest customer. We devote at least 25% of our total network capacity to serve DoD. There has been heavy usage of Inmarsat services in Afghanistan and Iraq. In addition, Inmarsat supplies mission-critical communications services on United States Air Force VIP planes, including Air Force One, the 89th Air Wing at Andrews Air Force Base that transports members of Congress, and the planes of regional Combatant Commanders. U.S. law enforcement agencies such as the Coast Guard, FBI, Immigration and Customs Enforcement, and Drug Enforcement Administration, use our services. We expect to be the communications link of choice when long-range vessel tracking and container monitoring systems are developed to comply with the Maritime Transportation Security Act.

American business depends on Inmarsat too. The Deere Company uses Inmarsat's satellite communications for its precision farming service. U.S. flag vessels have integrated Inmarsat communications into ship operations and to provide crew calling. The Vessel Monitoring System that industry and government rely on to

manage the sustainability of fisheries by tracking commercial fishing vessels and enforcing fishing regulations uses our satellite network. Portable Inmarsat terminals are used in remote regions around the world by American companies engaged in energy and mining exploration and construction projects, and by journalists for digital news gathering. You may remember watching live broadcasts by journalists using Inmarsat video phones on vehicles in troop caravans driving north in the opening days of the war in Iraq.

Agencies of the United Nations and non-governmental organizations like the Red Cross rely on Inmarsat communications to respond to natural disasters, like the tsunami last year, or to help refugees displaced by wars. Inmarsat is a partner of NetHope, a consortium of U.S.-based aid agencies that provide communications infrastructure to support assistance activities in developing countries.

The BGAN services that our distributors will provide via our new Inmarsat-4 satellites will enable these customers and others to do all of these things and more at broadband speed and at less cost. We have bet our company on the promise of broadband, investing $1.5 billion dollars in the construction and launch of our Inmarsat-4 satellites and the associated ground infrastructure.

This kind of risk-taking would not have been possible in an intergovernmental organization. The organization anticipated that more than 10 years ago. The process of privatizing Inmarsat began in 1993. Led by the U.S. delegation, Inmarsat pioneered the privatization model subsequently followed by Intelsat and Eutelsat. The Inmarsat business was transferred in April 1999 from the intergovernmental organization to a newly-created private company.

Thus, when Congress passed the ORBIT Act in March 2000, we were already well on our way to satisfying the privatization criteria laid down there. The Federal

Communications Commission determined in October 2001 that we had satisfied all ORBIT criteria except the requirement to conduct an IPO to substantially dilute the aggregate ownership of former Signatories.

An IPO was part of the privatization model agreed upon by the Inmarsat stakeholders. They set a target for the company to conduct an IPO within approximately two years. Like Congress, they could not foresee the collapse of the IPO markets.

The company prepared five times for an IPO, spending over $10 million dollars on external fees, as well as demanding an enormous amount of internal management effort. We had to ask Congress for two deadline extensions, which were granted in November 2001 and June 2003. Again, I express our appreciation for these extensions.

Notwithstanding the problems of the IPO markets, private equity funds did see the value in satellite companies. In December 2003, two funds, managed by Apax Partners and Permira, acquired the majority of Inmarsat. As a result, the aggregate ownership by shareholders that had formerly been Signatories in the intergovernmental organization was reduced to 42.54%. Of 85 former Signatories, only 15 retain an on-going ownership interest. Telenor Satellite Services of Norway, COMSAT Investments (now owned by Lockheed Martin), and KDDI Corporation of Japan own 14.95%, 13.96%, and 7.55% respectively. This result far exceeds the dilution that could have been achieved through an IPO of equity shares. And our new owners did conduct an IPO of debt securities that had the effect of subjecting Inmarsat to substantially the same kind of securities regulation that would have applied if we had listed equity securities.

We spent most of 2004 seeking a determination from the Commission that we had satisfied the IPO requirement in ORBIT by means of the private equity takeover and IPO of debt securities, but the Commission had concerns about whether Congress intended them to have discretion to make such a finding. Congress solved this problem by further amending the ORBIT Act last October. That amendment allows us to satisfy ORBIT without an IPO of equity securities if former Signatories neither own a majority of the financial interests in the company nor retain effective control through other means. We filed a certification to that effect with the Commission on November 15th, and are waiting for their decision.

If this Committee is now going to consider additional amendments to the ORBIT Act, I submit the following examples of restrictions that no longer make sense and should be eliminated:

- Section 621(5)(D)(ii)(II) prohibits our officers or managers from owning shares in telecommunications companies that were formerly Signatories, even if those companies did not remain Inmarsat shareholders after the takeover. Although the Commission did adopt a *de minimis* threshold, the prohibition nevertheless constrains the personal investment opportunities of our officers and managers, and also places an administrative burden on Inmarsat to annually survey these staff to confirm that they have not exceeded the allowed threshold.
- Section 624 prohibits reaffiliation with ICO Global Communications for 15 years, and also prohibits interlocking directorates. In case you don't remember, ICO was spun off by Inmarsat in 1995. It has since

gone through Chapter 11 and does not yet have an operating system. I can imagine no public policy reason for retaining this prohibition.

The purpose of the ORBIT Act was to ensure that Intelsat, New Skies, and Inmarsat completed their privatizations in a pro-competitive way. That objective has been realized. Inmarsat, and the many independent American companies across the United States engaged in distributing our services, manufacturing equipment for our network, and developing innovative service applications to meet the needs of government and commercial customers here and abroad, are ready to use our new Inmarsat-4 satellites to deliver BGAN and other services in the competitive marketplace.

Thank you for this opportunity to testify. I look forward to working with the Subcommittee on further legislation to update the ORBIT Act in light of the ownership changes and changes in the competitive marketplace that have occurred since the Act was passed five years ago.